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Counsel for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

SUZANNE SEKULER,

Plaintiff,

v.

C. R. BARD, INC.; BARD PERIPHERAL
VASCULAR, INCORPORATED,

Defendants.

CASE NO. 2:19-cv-01585-KJD-BNW

**STIPULATION AND [PROPOSED]
ORDER TO STAY CASE**

(FIRST REQUEST)

Plaintiff Suzanne Sekuler (“Plaintiff”) and Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“Defendants” and collectively with Plaintiff, the “Parties”), pursuant to Fed. R. Civ. P. 26(c) and (d) and LR IA 6-2, respectfully request that this Court temporarily stay discovery and all pretrial deadlines until **June 30, 2021** while the Parties pursue settlement. In support thereof, the Parties state as follows:

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1 1. This case was part of the Multi-District Litigation proceeding *In re: Bard IVC Filters*
2 *Product Liability Litigation*, pending before Senior Judge David Campbell of the District of Arizona.

3 2. Plaintiff alleges experiencing complications following the implantation of a Bard Inferior
4 Vena Cava (“IVC”) filter, a prescription medical device. She has asserted three strict products liability
5 counts (manufacturing defect, information defect (failure to warn) and design defect), six negligence
6 counts (design, manufacture, failure to recall/retrofit, failure to warn, negligent misrepresentation and
7 negligence per se), two breach of warranty counts (express and implied), two counts sounding in fraud
8 (fraudulent misrepresentation and fraudulent concealment), an unfair and deceptive trade practices count,
9 and a claim for punitive damages.

10 3. Defendants deny the Plaintiff’s allegations.

11 4. After four years, the completion of general issue discovery, and three bellwether trials,
12 Judge Campbell ordered that certain cases, which have not settled or are not close to settling, be
13 transferred or remanded to the appropriate jurisdictions around the country for case-specific discovery
14 and trial. As a part of that process, he established a “track” system, wherein certain cases were placed
15 on tracks either to finalize settlement paperwork, continue settlement negotiations, or be remanded or
16 transferred.

17 5. This case was transferred to this Court on June 1, 2017 because at the time it was not close
18 to settling. Recently, the Parties have begun settlement discussions and are scheduling a global mediation
19 as to all of Plaintiff’s counsel’s IVC filter cases in June 2021. The Parties believe that a stay is necessary
20 to conserve their resources and attention so that they may attempt to resolve this case and those of the
21 other plaintiffs represented by Plaintiff’s counsel with cases pending before this Court.

22 6. Accordingly, the Parties request that this Court issue an order staying discovery and
23 pretrial deadlines until **June 30, 2021** to allow the Parties time to continue their settlement discussions
24 and attend mediation in June if still necessary. This will further facilitate settlement discussions, prevent
25 unnecessary expenditures by the Parties, and conserve judicial resources as well as place this case on a
26 similar “track” as the MDL cases Judge Campbell determined should continue settlement dialogue.

27 7. A district court has broad discretion over pretrial discovery rulings. *Crawford-El v.*
28 *Britton*, 523 U.S. 574, 598 (1998); *accord, Republic of Ecuador v. Hinchee*, 741 F.3d 1185, 1188-89

1 (11th Cir. 2013); *Thermal Design, Inc. v. Am. Soc’y of Heating, Refrigerating & Air-Conditioning*
2 *Engineers, Inc.*, 755 F.3d 832, 837 (7th Cir. 2014); *see also, Cook v. Kartridg Pak Co.*, 840 F.2d 602, 604
3 (8th Cir. 1988) (“A district court must be free to use and control pretrial procedure in furtherance of the
4 orderly administration of justice.”).

5 8. Under Federal Rules of Civil Procedure 26(c) and 26(d), a court may limit the scope of
6 discovery or control its sequence. *Britton*, 523 U.S. at 598. Although settlement negotiations do not
7 automatically excuse a party from its discovery obligations, the parties can seek a stay prior to the cutoff
8 date. *Sofo v. Pan-American Life Ins. Co.*, 13 F.3d 239, 242 (7th Cir. 1994); *see also, Wichita Falls Office*
9 *Assocs. V. Banc One Corp.*, 978 F.2d 915, 918 (5th Cir. 1993) (finding that a “trial judge’s decision to
10 curtail discovery is granted great deference,” and noting that the discovery had been pushed back a
11 number of times because of pending settlement negotiations).

12 9. Facilitating the efforts of parties to resolve their disputes weighs in favor of granting a
13 stay. In *Coker v. Dowd*, 2:13-cv-0994-JCM-NJK, 2013 U.S. Dist. LEXIS 201845, at *2-3 (D. Nev. July
14 8, 2013), the parties requested a 60-day stay to facilitate ongoing settlement negotiations and permit them
15 to mediate global settlement. The Court granted the stay, finding the parties would be prejudiced if
16 required to move forward with discovery at that time and a stay would potentially prevent an unnecessary
17 complication in the case. *Id.* at *3. Similarly, the Parties in the present case are engaged in ongoing
18 comprehensive settlement negotiations with Plaintiff and the other plaintiffs represented by Plaintiff’s
19 counsel and plan to mediate these cases in June 2021.

20 10. The Parties agree that the relief sought herein is necessary to handle the case in the most
21 economical fashion yet allow sufficient time to schedule and complete discovery if necessary, consistent
22 with the scheduling obligations of counsel. The relief sought in this stipulation is not being requested for
23 delay, but so that justice may be done.

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1 **WHEREFORE**, Plaintiff and Defendants respectfully request the Court's approval of this
2 stipulation to stay discovery and all pretrial deadlines until **June 30, 2021** to allow the Parties to conduct
3 ongoing settlement negotiations and mediation.

4 **IT IS SO STIPULATED.**

5 Dated this 22nd day of February 2021.

6 WETHERALL GROUP, LTD.

GREENBERG TRAURIG, LLP

7 By: /s/ **Peter C. Wetherall**

By: /s/ **Eric W. Swanis**

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12 *Counsel for Plaintiff*

Counsel for Defendants

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15 **IT IS SO ORDERED.**

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18 KENT J. DAWSON
United States District Judge

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20 Dated this 19th day of March 2021.

CERTIFICATE OF SERVICE

I hereby certify that on **February 22, 2021**, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive such service.

/s/ Shermielynn Irasga

An employee of GREENBERG TRAURIG, LLP